

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION**

PLAINTIFF(S)	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Cause No. 3:05cv0001 AS
	)	
DEFENDANT(S),	)	
	)	
Defendants.	)	

**ORDER WITH REFERENCE TO CONDUCT OF TRIAL**

**I. PRELIMINARY STATEMENT IDENTIFYING THE CASE**

In cases which are to be tried to a jury, the Court will require that full opening statements be made during the voir dire stage of the trial.

**II. TRIAL BRIEFS**

A. Requirement of Filing. Trial briefs are optional. If a trial brief is filed, however, it must comport with the time limitations set forth below and must be served on all other parties. A trial brief is most helpful if it identifies the issues to be tried and addresses the elements of the claim(s) involved in the action, evidentiary questions and any other legal issues reasonably anticipated to arise at trial. A trial brief that indicates the anticipated testimony of each witness expected to be called will expedite the trial.

B. Plaintiff's Trial Brief. The plaintiff's trial brief, if any, must be filed at least **fifteen (15) days before the trial**.

C. Opposing Parties' Trial Brief. Opposing parties' trial briefs, if any, must be filed at least **ten (10) days before the trial**.

D. Supplementary Briefs. Any party that deems it necessary may file a supplementary brief at least **two (2) business days before the trial**.

### **III. VOIR DIRE QUESTIONS AND JURY INSTRUCTIONS**

In cases which are to be tried to a jury, a complete set of proposed voir dire questions and jury instructions shall be prepared in writing (all pages should be numbered for ease) by counsel, who shall then serve opposing counsel with a copy of same **not later than fifteen (15) days before trial**. The court recommends, but does not require, that counsel confer about the instructions before this deadline; such discussion may allow all counsel to prepare fewer proposed instructions, saving attorney time, client expense, and court time. Thereafter, counsel shall file with the court a complete set of proposed voir dire questions and jury instructions, in duplicate, **not later than 5 days before trial**. *The proposed jury instructions are to be filed with the court along with being emailed in WordPerfect or MS Word format to the same email address you would send proposed orders.*

Additional Submission by Email. The court requires the submission of your pleading containing your proposed instructions in addition to the written submission. Such submission eases the court's task in preparing the instructions for ruling at the trial. Word processing is not universal and varying programs are in use, so such submission is not required, but is helpful if feasible. The court employs WordPerfect 8 and 9 and Microsoft Word.

### **IV. EXHIBITS**

In all cases, counsel for each of the parties will assemble all documents, photographs, or other materials that may be introduced in evidence at the trial of this case, as well as charts, graphs, models and diagrams that may be used in the trial, whether or not they will be introduced in evidence. Counsel will make available copies of each such document to opposing counsel **not later than twenty (20) days before trial**. Furthermore, counsel are to provide a list containing a brief

description of each item of documentary or physical proof which may be offered in evidence at trial to opposing counsel and to file a copy with the court. The procedure will be as follows:

All documents, photographs and other matter that may be introduced in evidence will be assembled in a binder, with each exhibit bearing a number or letter, preferably by means of a tab on each document. The documents will be numbered or lettered according to the regular practice used in this court, (i.e. Plaintiff's numbered and Defendant's lettered). If in doubt about such practice, counsel should confer with the courtroom deputy clerk in regard thereto.

All counsel shall confer as to the exhibits to be offered into evidence by other parties and determine what exhibits to which there are no objections and which may be admitted without formal proof. A list of such items shall be filed with the court, in duplicate, as hereinafter provided, **not later than ten (10) days before trial**.

With respect to those exhibits to which there is an objection, counsel shall then file with the court, in duplicate, as hereinafter provided, appropriate memoranda, citing points and authorities, as to why the same should be admitted or not admitted, whichever the case may be, **not later than five (5) days before trial**, and serve a copy on opposing counsel.

The parties should not file exhibits in advance of trial, but rather the exhibits will be brought in by counsel at an appropriate time just prior to the commencement of trial.

Exhibit List for Clerk. You must prepare a list of your exhibits for the courtroom deputy clerk and submit this list of exhibits to the courtroom deputy at the beginning of the trial.

At the beginning of the trial, the court will rule, on the record, with respect to all objections and formally admit in evidence all exhibits not objected to and all exhibits with respect to which objections are overruled.

The proponent will not be required to use any exhibit if it should not prove necessary or desirable for counsel to do so and those exhibits may be withdrawn, on the record, at the conclusion of the evidence. No document, photograph or other material of any kind whatsoever shall be received in evidence at the trial or used at the trial for any purpose if not offered in accordance with this procedure, unless the necessity for its use could not have been reasonably foreseen by the time fixed for its production 20 days before trial, and unless leave of court for cause shown is hereafter obtained on such conditions as the court may consider proper prior to its use. In any event, as soon as necessity for the use of material that was not produced is discovered, it will be shown to opposing counsel and made known to the Court.

## **V. MOTIONS IN LIMINE**

Any motions in limine shall be filed at least **twenty (20) days before the trial**, together with appropriate memoranda citing points and authorities.

## **VI. DEPOSITIONS**

The following procedure shall be required for any in-trial use of depositions other than for impeachment:

A. Exchange among Counsel. You must notify opposing counsel at least **twenty (20) days before the trial** of any depositions or portions of any deposition that you intend to introduce in your case-in-chief at trial. All counsel shall then confer as to any other portions of the deposition that an opposing party intends to offer into evidence and any objections that will be raised to the portions to be offered.

B. Submission to the Court. At least **fifteen (15) days before the trial**, you must file with the court a joint statement of those depositions, or portions of depositions, that the parties intend to offer into evidence at the trial of this cause, together with any objections that have not been resolved

after conferring. Because the depositions will not have been filed with the court, copies must be submitted with any objections, but counsel need only identify the pertinent portions by page and line number. You may submit any additional memoranda with respect to these objections, but must do so at least **five (5) days before the trial**.

## **VII. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In all non-jury cases, counsel for each of the parties shall prepare, file and exchange proposed findings of fact and conclusions of law in accordance with the fashion and time frame prescribed by the court.

## **VIII. PROCEDURE FOR FILING SUBMISSIONS**

Whenever this order requires filing "with the court, as hereinafter provided," the procedure shall be as follows:

(1) The original and a copy shall be filed with the Clerk of the Court. In those instances where deadlines have been imposed and counsel wait until the last day of that deadline, the filing of papers in the courthouse and/or upon counsel for the other parties shall be completed by **4:00 p.m.**, South Bend time.

## **IX. SETTLEMENT**

During the entire pendency of this action, through and including the end of trial, the parties are admonished to vigorously pursue the possibility of settlement. With respect to jury cases, counsel are advised that pursuant to local rule:

"Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then, except for good cause shown, jury costs, including marshal's fees, mileage and per diem, shall be assessed equally against the parties and/or their counsel, or otherwise assessed as directed by the court, unless the clerk's office is notified at least one (1) full business day prior to the day on which the action is scheduled for trial in time to advise the jurors that it will not be necessary for them to attend."

#### **X. PRIOR ORDERS - ISSUES**

Any order by one of the court's Magistrate Judges or by the court shall continue to be binding on the parties except as thereafter modified by the court, and the parties shall not be permitted to enlarge the issues as limited by any pre-trial order or the pleadings except upon order of the court expressly allowing such enlargement of the issues.

#### **XI. SANCTIONS FOR NON-COMPLIANCE**

Counsel are expected to comply literally with this order. The court will consider the imposition of appropriate sanctions in the event of non-compliance.

In the event that any of the parties desire to be relieved of any portions of this order, they shall file a written motion with the court requesting such relief **not later than 20 days before the applicable deadline.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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**ALLEN SHARP, JUDGE**  
**NORTHERN DISTRICT OF INDIANA**

## **SUMMARY OF DEADLINES**

### **20 (CALENDAR) DAYS BEFORE TRIAL**

- ALL Requested relief from any deadline in this order 20 days before the applicable deadline.
- ALL Exchange exhibits
- ALL Parties to notify opposing counsel of portions of depositions it intends to use.
- ALL Motions in Limine to be filed.

### **15 (CALENDAR) DAYS BEFORE TRIAL**

- ALL Plaintiff may file brief with the court and serve opposing counsel.
- ALL Joint Statement of depositions or portions of depositions.
- JURY Counsel to serve voir dire and proposed instructions on opposing counsel.

### **10 (CALENDAR) DAYS BEFORE TRIAL**

- ALL Opposing counsel may file trial briefs and serve on all parties.
- ALL Parties file list of exhibits not objected to.

### **5 (CALENDAR) DAYS BEFORE TRIAL**

- JURY File proposed voir dire and jury instructions and email jury instructions.
- ALL Objections to Exhibits due.
- ALL Additional Memoranda with respect to deposition objections.

### **2 (BUSINESS) DAYS BEFORE TRIAL**

- ALL Any supplemental brief due.